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The Work of the Trial Courts in Indiana

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The Work of the Trial Courts in Indiana.

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Los Angeles, city and county, has solved the problem as to "Delays in the Trial Courts," as per an article entitled "Justice Cracks the Whip," in the June number of the *American Magazine,* quoting:

"A system founded upon the revolutionary idea that courts were devised for the people, and not for lazy judges and dilatory lawyers.

"In February, 1931, the 38 civil judges of the Los Angeles Superior Court were 4 years and 3 months behind their work. Today, if there is real need for hurry, lawyers can take their witnesses to court and get a trial under way this afternoon. The average case waits 30 days.

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"The Los Angeles Superior Court is one of the most important in the United States. Its civil departments handle all city and county probate and divorce actions, and all equity cases in which the amount involved is more than $2,000.

"Last year Judge McComb's calendar disposed of 9,938 cases, approximately 40% of all such cases in the entire state of California.

"The Los Angeles municipal courts, using the system, are up to date.

"The Appellate department of the Superior Court last January had only one month's work ahead of it.

"Lawyers there are not granted postponements except for very vital reasons. Less than 2% of the cases are continued. A case once set for trial, must be tried, unless both attorneys agree that it shall be taken off the calendar, or unless an attorney is actually engaged in the trial of another case, or for some valid reason that satisfies the hardboiled judge, such as the sudden illness of an important witness."

The trial judge on the first day of the term should call the criminal and probate dockets and set the date of the trials for the same, and, on the second day of the term should call the civil docket and set the dates of the trials for the same.

In the call of the said dockets, the court reporter has a copy of the court's dockets and a skeleton calendar for the term, and the court dictates to her his minutes and ruling on each case including the setting of the trial calendars, which are later typewritten on the court's dockets, and, in this way, much time is saved in the call of the said dockets, and yet, accurately done.

In setting the trial calendar, so arrange the dates of trials as to accommodate attorneys and clients insofar as possible; then, insist and enforce trial on the date set; but, when cases are set for trial and are thereafter settled or other disposition made thereof, at once set another case in lieu and instead thereof, so as to use the whole of the term. In this way it will be possible to dispose of many cases.

The trial judge should ever keep in mind that speedy justice is the object and purpose of his court.

By this system and with the cooperation of the local bar, one of the best for ability, honesty, industry and loyalty in the State of Indiana—the Daviess Circuit Court, at a recent term of six weeks, averaged 17 cases per day in which final disposition was made in each case for the term.

Much time is saved by first obtaining clearcut issues.

The attorneys should know the issues and the court should know the issues and the jury should know the issues from the instructions of the court.

In the Daviess Circuit Court we had a very recent experience. One of the great life insurance companies owned a great acreage of farm lands in Knox County, Indiana, which was protected by the Breevort levee. This levee is approximately 65 miles in length along the White and Wabash Rivers, and includes approximately 55,000 acres of farm lands.

The said owner had one tenant who had 991 acres rented, and was equipped with 31 mules, 2 large tractors, 2 large grain drills, large discs, harrows, cultivators, and all necessary farm implements and machinery, 6 men with families living in tenant houses on this farm paid by the day and 15 men not living on the farm and paid by the day.

On March 3, 1933, the owner of the said farm brought an action in ejectment against the tenant in the Knox Circuit Court, and on the same day obtained a restraining order on filing a statutory undertaking; the restraining order was "hog tight", and on March 4, 1933, the summons was served on the said tenant in the action of ejectment, and the said restraining order was served on the said tenant and all the 16 men employed by the said tenant,

and, on March 6, 1933, a hearing was had, on the issue on the restraining order, and the court ordered that this issue be determined at the time of the trial of the issues on the ejectment and the restraining order remained in force insofar as any action of the court thereon at this time.

The trial, on the ejectment, was heard and determined on May 18, 19 and 20, 1933, and resulted in favor of the said tenant.

In the meantime, from the filing of the ejectment complaint and the final determination thereof, there had been much rain and the White and Wabash rivers overflowed, flood gates were closed in the said Breevort levee, and much of the 991-acre farm was under water, crops ruined, and tenant was unable to cultivate much of the 991-acre farm until after May 20, 1933.

After this, an action was commenced, by the said tenant, on the said undertaking, in the Knox Circuit Court, and a change of venue therefrom to the Daviess Circuit Court, where the defendant insurance company filed an answer in general denial to the complaint on the undertaking.

The trial was had on the apparent defense that loss, which caused the damages to the tenant was on account of the rains and floods and not on account of the alleged restraining order, and, mentioned incidentally in the trial and some testimony that the tenant on March 9, 1933, had filed his undertaking, as provided in the ejectment statute, Acts 1927, p. 741, and was allowed to retain possession of the alleged real estate pending the final judgment of the court.

The court instructed the jury to the effect that the tenant was entitled to recover as his damages such damages as he had sustained by reason of the alleged restraining order from March 4, 1933, when restraining order was served on the said tenant until March 9, 1933, when the said tenant gave his undertaking as provided by the said Act of 1927, p. 741. The tenant insisted that he had been damaged in the sum of $7,000, and the jury evidently divided this by 2, and returned a verdict for the tenant in the sum of $3,500.

This is a long story; but, it illustrates that if there had been more care in closing these issues, there would have been, at most, but five days for which the undertaking, filed when restraining order was issued, would have been liable, and could have been tried in one day instead of four days, and much less costs.

As a matter of course, we know that an answer in general denial is frequently the only answer necessary and is the one used by skilled and able pleaders.

However, if the execution of the undertaking by the tenant on March 9, 1933, in the said ejectment proceeding, had been pleaded by way of answer; then, this would have avoided much, if not all the evidence introduced.

As a matter of fact, there is a question whether the ejectment statute, Acts 1927, p. 741, does not wholly cover actions in ejectment, and there can be no restraining order issued.

Trial judges should insist on oral arguments, and, in many cases, on written briefs in closing issues.

In this way the lawyers become familiar with the issues and learn the views of the other side and the court becomes familiar with the issues and is able to rule legally without further personal investigation and thus prompt and legal rulings are had and speed increased.

The trial judge should set a specific time, on the calendar, for the closing of the issues in actions where the law proposition involved, as on demurrers, are not clear, and insist that lawyers come prepared to argue the same, and, in this way, speed in the trial is made and often arguments on admissibility of evidence is not necessary and delay in trial thereby avoided.

The greatest burden of a trial judge is to know the nature of each cause of action and the law applicable thereto; but, this must be known and the sooner the better.

This necessarily requires the briefing of the law applicable, which can be done by reading the statutes and cases and pencil mark the same, and have the court reporter copy the same as marked. Thus the court becomes familiar with the law even before the issues are closed.

It is frequently necessary for the trial judge to know more about the law of the case than the lawyers who are trying the same, and he should always know the issues and the law applicable thereto.

Trial judges should be at their office at least an hour before the court convenes, and the time should be devoted to planning the day's work, if necessary reviewing the issues of the trial or trials for the day, reviewing his briefs on the legal propositions involved in the cases for trial during the day insofar as known.

Trial judges should take cognizance of each action as soon as filed and obtain a copy of the complaint; then, he will know whether or not the same requires any special legal investigation, and if so finds, then he should make such investigation at the earliest time possible and make record thereof in notes and briefs on the law.

An analysis of the complaint, by the trial judge, at this time, will be a time saver, in making up the issues and in the trial thereafter, and, the trial judge will be surprised at the few in number of cases that will require much investigation.

The burden placed on the circuit judges of Indiana are appalling, a partial list, as follows: Civil actions, criminal offenses, probate, juvenile court, applications for committments of patients to insane hospitals, epileptic villages, feeble-minded institutions, appeals from justice of the peace, and appeals on old age pensions, etc.

Trial judge should always give his reason for his ruling, unless the same is apparent, so that counsel may know the mind of the court.

The Daviess Circuit Court has many venued cases from all adjoining counties, and, we have some difficulty in teaching these attorneys our program. By way of illustration:

An Indianapolis attorney representing a railroad appeared for the defendant and filed a motion to make the complaint more specific, and requested the court to fix the time when argument would be heard thereon; then, the court informed him that his motion was overruled and that he was required to plead further.

Later, in another action, this same lawyer appeared, and filed his motions to strike out, to make more specific, to plead facts to sustain conclusions, etc., and, as these were overruled, one by one, he had the others ready to file, and, when he filed and read his demurrer the court announced that he would hear argument on the demurrer.

We would not have you understand that the trial judge should not consider such and all motions. In fact, the trial judge should be very technical in closing issues.

The trial judge will find it profitable and time well spent to fix a time for closing the issues in a certain case, have the same on the trial calendar, and advise the lawyers that he wants them to be prepared and have their authorities with them and read briefly from their authorities, so that the court can get the holding of the authority, and not to cite a long list of authorities obtained from some digest. In this way, the attorneys are advised and the court can rule intelligently.

In my opinion, any trial judge of Indiana, who cares to pay the price, can bring his docket up to date and try all cases as they mature and are ready for trial.

It has been my observation, through some years, that any man, who has an ambition to accomplish some desired goal, can do so, if he is willing to pay the price.

Permit me to submit a statement, by way of illustration:

A few years ago, a man died in Daviess County, Indiana, whose sole ambition, desire and pleasure in life was the accumulating of money, and he left an estate of approximately $1,250,000.00, of which there was a list of bonds and stocks aggregating $900,000.00 that could not have been excelled in value.

This man never made any large sum of money at any one time; but he devoted himself wholly to the one thing of making money and keeping money and seeing that his investments were first-class and working all the time.

He told me of his reasoning on investing in a certain street railway stock to this effect:

"This city is the capital of the state, growing, and will continue to grow, and the people will and must use street cars more and more."

Then, as we sat at a large window in his hotel lobby, he suddenly pointed at an automobile parked at the curb, and said, "But I never thought about these damned things."

This man was seldom happy, but on one occasion I saw him when he was literally "standing on tip toe," and the occasion was this: United States bonds were selling at $85 and he had purchased that day $50,000 of these bonds at that price, and he said to me, "They are worth par!"

Every trial judge of Indiana, who is willing to pay the price and has the ambition to accomplish such goal can do so, and will appreciate the thrill and ecstasy of the man who accumulated the million-dollar estate—and will have served his state well.

The trial judge of the Daviess Circuit Court, for almost twelve years, has not failed to prepare and give his own instructions to the jury, with one exception, and in that case, it was necessary to sustain a motion for a new trial on account of error in instructions.

Instructions prepared and submitted by lawyers are frequently better and more accurate than those prepared by the judge, and should be given.

Too much can not be said on the effect of the instructions of the court to the jury in the prompt and legal disposition of the case by the jury.

If greater care is taken in the preparation of the instructions so that the jury clearly know the issue and how to apply the law, as given by the court in his instructions, to the facts; then, this will tend to get results on prompt and accurate verdicts and speed up the disposition of trials; a hung jury often simply means another trial, and the loss of the time, effort, expense and cost of the trial which failed.

So many lawyers submit instructions, beginning with the words, "I instruct the jury"; then close with the words, "then you must find for the plaintiff" (or defendant, as the case may be), apparently on the theory that the oftener they can ring in the word "plaintiff" or "defendant", the greater will be the effect on the jury.

The better form is to state some issue, which the plaintiff or defendant must prove; then instruct the jury; if the jury find from a preponderance of the evidence that the plaintiff or defendant has so proven, their verdict should be for the plaintiff or defendant on such proposition.

The trial judge's instructions should be brief, and each instruction should be so clearly stated as to be comprehended by each member of the jury, on each material allegation of the complaint.

In my opinion, the General Assembly of the State of Indiana, at its regular session in 1935, should relieve the circuit and superior judges of said state from the duty of committing the insane to the insane hospitals, from committing the epileptics to the Village for Epileptics, from committing the feeble-minded to the Fort Wayne State School and the Muscatatuck Colony and from committing children to the James Whitcomb Riley Hospital for Children.